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**MAY 02 2006**

**OFFICE OF PETITIONS**

In re Application of :  
David Todjar Hengami :  
Application No. 10/675,318 : DECISION ON PETITION  
Filed: September 29, 2003 : UNDER 37 C.F.R. §1.137(b)  
Attorney Docket Number: HENG- :  
67322 :  
Title: CONVENIENT SOLID PRODUCT :  
DISPENSING PACKAGE :

This is a decision on the petition filed January 17, 2006, pursuant to 37 C.F.R. §1.137(b)<sup>1</sup>, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 29, 2005, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 30, 2005. A notice of abandonment was mailed January 18, 2006.

<sup>1</sup> A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. The reply required to the outstanding Office action or notice, unless previously filed;
2. The petition fee as set forth in § 1.17(m);
3. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
4. Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

With the present petition, Petitioner has filed the petition fee and has made the proper statement of unintentional delay. As such, Petitioner has met requirements (2) and (3) of 37 C.F.R. §1.137(b). A terminal disclaimer is not required.

Regarding the first requirement, the requirement has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed<sup>2</sup>. In order for this application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1) (i.e., an amendment, a request for reconsideration, or the filing of a continuing application).

Petitioner has submitted a three-month extension of time, however this cannot constitute the required reply, as had it been timely filed, it would not have been sufficient to have avoided the abandonment. See MPEP §711.03(c)(II)(A)(2)(a).

Petitioner will further note that an extension of time under 37 C.F.R. §1.136 must be filed prior to the expiration of the maximum extendable period for reply<sup>3</sup>. This extension of time cannot be accepted, and as such, will be refunded to Petitioner's Deposit Account in due course.

As such, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski and may be submitted by mail<sup>4</sup>, hand-delivery<sup>5</sup>, or facsimile<sup>6</sup>.

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<sup>2</sup> See M.P.E.P. 711.03(c).

<sup>3</sup> See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

<sup>4</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>5</sup> Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

<sup>6</sup> 571-273-8300 - please note this is a central facsimile number.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay<sup>7</sup>. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.137(b) was intentional, petitioner must notify the Office.



**Paul Shanoski**  
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<sup>7</sup> See 37 CFR 10.18(b); cf. Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).